

OFFICE OF THE PROSECUTOR OF LUCAS COUNTY

OPINION NO. 01-03

April 9, 2001

Sheriff James A. Telb
Lucas County Sheriff
1622 Spielbusch Avenue
Toledo, Ohio 43624

SYLLABUS

1. It is the intent of the replevin statute, Chapter 2737 of the Ohio Revised Code, that a levying officer, including the Sheriff, execute an order of possession after it has been issued in a replevin action.
2. There is no statutory requirement for property of a specific dollar amount to be at issue before the Sheriff may execute an order of possession.
3. An order of execution in a replevin action, issued by the court of common pleas, may not be referred to a municipal court for relief.

OPINION

I am responding to your request for my opinion regarding the Sheriff's Department's responsibility in recovering property in a replevin action. Specifically, you ask whether property must have a specific dollar amount before the Sheriff may execute an order of possession and whether an order of execution may be referred to an appropriate municipal court for relief.

Ohio Revised Code Chapter 2737 governs replevin actions. The process of replevin begins when a party makes a claim for recovery of specific personal property. After that claim has been made, the party may apply to the court for an order of possession of the property, pursuant to R.C. 2737.03. A motion for an order of possession must contain a description of the property and the approximate value of the property, among other things. See R.C. 2737.03(A). An order of possession is, "an order issued by a court . . . for delivery to the movant of possession of specific personal property pending final judgment in the action." See R.C. 2737.01(D).

The order of possession, when issued by the court, “shall be addressed and delivered to the levying officer.” An order must contain the names of the parties, a description of the property, the location if known of the property and a commandment to the levying officer to take the property and deliver it to the movant, pursuant to R.C. 2737.08.

A “levying officer” is defined as, “the sheriff, another authorized law enforcement officer, or a bailiff who is ordered by the court to take possession of property and deliver it to the movant.” See R.C. 2737.01(E). The levying officer, “promptly shall execute the order of possession after it has taken effect by taking possession of the property described in the order and by delivering the property to the movant in accordance with the order of possession.” R.C. 311.07(A) also provides that the sheriff shall, “execute all warrants, writs, and any other process directed to the sheriff by any proper and lawful authority of this state.” As a practical matter, while a sheriff does have the duty to execute an order of possession, a sheriff’s office may prioritize its responsibilities. Matters of public safety and welfare take precedence over execution of orders of possession. While execution of these orders is a statutory duty of the sheriff, there are many other statutory duties of this office, including that the sheriff shall, “preserve the public peace.” See R.C. 311.07, et. seq.

There is no requirement in the Ohio Revised Code that the property has to meet a certain dollar amount before it can be subject to a replevin action. All replevin actions are handled as previously described and as Chapter 2737 requires.

The order of possession is directed to a specific levying officer and it orders possession of the item by the levying officer and return to the movant. There is no section of the Code that allows a replevin action to be referred by the Sheriff to an appropriate municipal court. The authority of the county, its officers, and its agencies is limited to that conferred expressly by statute or by necessary implication therefrom.

In accord with this principle, a county office or officer may not charge a fee for any service absent express or implied statutory authority to do so. See R.C. 325.36 (“no salaried county official ... shall collect a fee other than that prescribed by law”); *accord* 1982 Op. Att’y Gen. No. 82-075 (absent statutory authority, a county sheriff may not charge a fee for issuance of a permit). Therefore, the sheriff may not charge any additional fees other than those already prescribed by statute for a replevin action. For execution of a writ of replevin, a sheriff is authorized charge \$20.00. See 311.17(A)(1)(4). Should you believe a change in the statutory amount for replevin actions is necessary, your remedy is through the legislature. Our office would be willing and able to assist in that process.

Therefore, it is my opinion, and you are hereby advised:

1. It is the intent of the replevin statute, Chapter 2737 of the Ohio Revised Code, that a levying officer, including the Sheriff, execute an order of possession after it has been issued in a replevin action.
2. There is no statutory requirement for property of a specific dollar amount to be at issue before the Sheriff may execute an order of possession.
3. An order of execution in a replevin action, issued by the court of common pleas, may not be referred to a municipal court for relief.

Sincerely,

JULIA R. BATES
PROSECUTING ATTORNEY

JRB/jws